

SENATE BILL 70

D4, N2

(PRE-FILED)

6lr1198
CF HB 43

By: **Senator Reilly**

Requested: November 13, 2015

Introduced and read first time: January 13, 2016

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Duties of Guardian of the Person and Visitation Between Adult Child and**
3 **Parent**

4 FOR the purpose of altering the duties of a guardian of the person of a disabled person to
5 include the duty to enforce the disabled person's right to receive visitors and certain
6 communications; requiring a guardian of the person of a disabled person to inform
7 certain relatives of the disabled person if the disabled person dies or has been
8 hospitalized for a certain period; requiring a guardian of the person of a deceased
9 disabled person to inform certain relatives of the disabled person of any funeral
10 arrangements and the location of the disabled person's final resting place;
11 authorizing a certain adult child to file a petition to compel visitation with a certain
12 parent; requiring the petition to be filed in a certain circuit court and to include
13 certain information; requiring the petitioner to personally serve on and mail to
14 certain individuals a copy of the petition; requiring the court to determine whether
15 the proposed visatee has retained or plans to retain an attorney; authorizing the court
16 to appoint an attorney for an unrepresented proposed visatee; requiring the court to
17 appoint an independent investigator to conduct an investigation and report written
18 findings to the court; establishing the duties of the independent investigator;
19 establishing that the report of the independent investigator is confidential and shall
20 be made available only to certain individuals; authorizing the court to order that an
21 investigation is not necessary or that a more limited investigation may be performed
22 under certain circumstances; requiring the court to mail notice of the hearing on the
23 petition to certain individuals; requiring the court to determine whether the
24 proposed visatee has sufficient capacity to make a knowing and intelligent visitation
25 decision; requiring the court to determine whether the proposed visatee would want
26 visitation under certain circumstances; requiring the court to grant or deny
27 visitation under certain circumstances; establishing that a certain determination
28 regarding capacity is not admissible as evidence in any other legal proceeding;
29 requiring the court to order each petitioner to pay the reasonable fees and expenses
30 of the independent investigator and any attorney appointed for the proposed visatee;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 authorizing the court to order another individual to pay the reasonable fees and
2 expenses of the independent investigator and any attorney appointed for the
3 proposed visatee under certain circumstances; establishing that the court has
4 continuing jurisdiction to vacate or modify an order issued under this Act; defining
5 certain terms; and generally relating to visitation and communications between
6 certain family members.

7 BY repealing and reenacting, without amendments,
8 Article – Estates and Trusts
9 Section 13–708(a)
10 Annotated Code of Maryland
11 (2011 Replacement Volume and 2015 Supplement)

12 BY repealing and reenacting, with amendments,
13 Article – Estates and Trusts
14 Section 13–708(b)
15 Annotated Code of Maryland
16 (2011 Replacement Volume and 2015 Supplement)

17 BY adding to
18 Article – Estates and Trusts
19 Section 13–708.1
20 Annotated Code of Maryland
21 (2011 Replacement Volume and 2015 Supplement)

22 BY adding to
23 Article – Family Law
24 Section 15–101 through 15–104 to be under the new title “Title 15. Visitation
25 Between Adult Child and Parent”
26 Annotated Code of Maryland
27 (2012 Replacement Volume and 2015 Supplement)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
29 That the Laws of Maryland read as follows:

30 **Article – Estates and Trusts**

31 13–708.

32 (a) (1) The court may grant to a guardian of a person only those powers
33 necessary to provide for the demonstrated need of the disabled person.

34 (2) (i) The court may appoint a guardian of the person of a disabled
35 person for the limited purpose of making one or more decisions related to the health care
36 of that person.

1 (ii) The court may appoint a guardian of the person of a disabled
2 person for a limited period of time if it appears probable that the disability will cease within
3 1 year of the appointment of the guardian.

4 (b) Subject to subsection (a) of this section, the rights, duties, and powers which
5 the court may order include, but are not limited to:

6 (1) The same rights, powers, and duties that a parent has with respect to
7 an unemancipated minor child, except that the guardian is not liable solely by reason of the
8 guardianship to third persons for any act of the disabled person;

9 (2) The right to custody of the disabled person and to establish his place of
10 abode within and without the State, provided there is court authorization for any change
11 in the classification of abode, except that no one may be committed to a mental facility
12 without an involuntary commitment proceeding as provided by law;

13 (3) The duty to provide for care, comfort, and maintenance, including
14 social, recreational, and friendship requirements, and, if appropriate, for training and
15 education of the disabled person;

16 **(4) THE DUTY TO ENFORCE THE DISABLED PERSON'S RIGHT TO**
17 **RECEIVE VISITORS, TELEPHONE CALLS, PERSONAL MAIL, AND ELECTRONIC**
18 **COMMUNICATIONS;**

19 **[(4)] (5)** The duty to take reasonable care of the clothing, furniture,
20 vehicles, and other personal effects of the disabled person, and, if other property requires
21 protection, the power to commence protective proceedings;

22 **[(5)] (6)** If a guardian of the estate of the disabled person has not been
23 appointed, the right to commence proceedings to compel performance by any person of his
24 duty to support the disabled person, and to apply the estate to the support, care, and
25 education of the disabled person, except that the guardian of the person may not obtain
26 funds from the estate for room and board that the guardian, his spouse, parent, or child
27 provide without a court order approving the charge, and the duty to exercise care to
28 conserve any excess estate for the needs of the disabled person;

29 **[(6)] (7)** If a guardian of the estate has been appointed, the duty to control
30 the custody and care of the disabled person, to receive reasonable sums for room and board
31 provided to the disabled person, and to account to the guardian of the estate for funds
32 expended, and the right to ask the guardian of the estate to expend the estate in payment
33 of third persons for care and maintenance of the disabled person;

34 **[(7)] (8)** The duty to file an annual or biannual report with the court
35 indicating the present place of residence and health status of the ward, the guardian's plan
36 for preserving and maintaining the future well-being of the ward, and the need for
37 continuance or cessation of the guardianship or for any alteration in the powers of the

1 guardian. The court shall renew the appointment of the guardian if it is satisfied that the
 2 grounds for the original appointment stated in § 13–705(b) of this subtitle continue to exist.
 3 If the court believes such grounds may not exist, it shall hold a hearing, similar to that
 4 provided for in § 13–705 of this subtitle, at which the guardian shall be required to prove
 5 that such grounds exist. If the court does not make these findings, it shall order the
 6 discontinuance of the guardianship of the person. If the guardian declines to participate in
 7 the hearing, the court may appoint another guardian to replace him pursuant to the
 8 priorities in § 13–707(a) of this subtitle; and

9 **[(8)] (9)** The power to give necessary consent or approval for:

10 (i) Medical or other professional care, counsel, treatment, or service,
 11 including admission to a hospital or nursing home or transfer from one medical facility to
 12 another;

13 (ii) Withholding medical or other professional care, counsel,
 14 treatment, or service; and

15 (iii) Withdrawing medical or other professional care, counsel,
 16 treatment, or service.

17 **13–708.1.**

18 **(A) A GUARDIAN OF THE PERSON OF A DISABLED PERSON SHALL, AS SOON**
 19 **AS REASONABLY POSSIBLE, INFORM THE DISABLED PERSON’S SPOUSE, ADULT**
 20 **CHILDREN, ADULT GRANDCHILDREN, PARENTS, AND SIBLINGS IF THE DISABLED**
 21 **PERSON DIES OR HAS BEEN HOSPITALIZED IN A HOSPITAL, AS DEFINED IN § 19–301**
 22 **OF THE HEALTH – GENERAL ARTICLE, FOR A PERIOD OF AT LEAST 3 DAYS.**

23 **(B) IN THE CASE OF THE DEATH OF THE DISABLED PERSON, THE GUARDIAN**
 24 **SHALL, AS SOON AS REASONABLY POSSIBLE, INFORM THE DISABLED PERSON’S**
 25 **SPOUSE, ADULT CHILDREN, ADULT GRANDCHILDREN, PARENTS, AND SIBLINGS OF**
 26 **ANY FUNERAL ARRANGEMENTS AND THE LOCATION OF THE DISABLED PERSON’S**
 27 **FINAL RESTING PLACE.**

28 **Article – Family Law**

29 **TITLE 15. VISITATION BETWEEN ADULT CHILD AND PARENT.**

30 **15–101.**

31 **(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
 32 **INDICATED.**

1 **(B) “ADULT CHILD” MEANS AN ADULT WHO IS THE BIOLOGICAL CHILD OF A**
2 **PROPOSED VISITEE OR WHO IS THE CHILD OF A PROPOSED VISITEE THROUGH**
3 **ADOPTION, THROUGH THE MARRIAGE OR FORMER MARRIAGE OF THE PROPOSED**
4 **VISITEE TO THE ADULT CHILD’S BIOLOGICAL PARENT, OR BY A JUDGMENT OF**
5 **PARENTAGE ENTERED BY A COURT OF COMPETENT JURISDICTION.**

6 **(C) “PROPOSED VISITEE” MEANS A PARENT OF AN ADULT CHILD FOR WHOM**
7 **A VISITATION DECISION IS SOUGHT.**

8 **(D) “VISITATION” MEANS ANY IN-PERSON MEETING, OR ANY TELEPHONIC,**
9 **MAIL, OR ELECTRONIC COMMUNICATION, BETWEEN A PROPOSED VISITEE AND THE**
10 **PROPOSED VISITEE’S ADULT CHILD.**

11 **(E) “VISITATION DECISION” MEANS A DECISION REGARDING VISITATION**
12 **BETWEEN A PROPOSED VISITEE AND AN ADULT CHILD, INCLUDING:**

13 **(1) APPROVAL OR DISAPPROVAL OF ANY VISITATION; AND**

14 **(2) IF APPROVED, THE SPECIFICS OF THE VISITATION, INCLUDING**
15 **THE TIME, PLACE, AND MANNER OF THE VISITATION.**

16 **15-102.**

17 **(A) AN ADULT CHILD MAY FILE A PETITION TO COMPEL VISITATION WITH A**
18 **PROPOSED VISITEE.**

19 **(B) THE PETITION SHALL BE FILED IN THE CIRCUIT COURT FOR THE**
20 **COUNTY IN WHICH THE PROPOSED VISITEE IS DOMICILED OR IS TEMPORARILY**
21 **LIVING.**

22 **(C) THE PETITION SHALL STATE, TO THE EXTENT KNOWN TO THE**
23 **PETITIONER:**

24 **(1) THE CONDITION OF THE PROPOSED VISITEE’S HEALTH;**

25 **(2) THE PROPOSED VISITATION THAT IS SOUGHT;**

26 **(3) THE EFFORTS MADE TO OBTAIN VISITATION WITH THE PROPOSED**
27 **VISITEE;**

28 **(4) WHETHER THERE IS ANY DEFICIT IN THE PROPOSED VISITEE’S**
29 **MENTAL FUNCTIONS THAT AFFECTS THE PROPOSED VISITEE’S ABILITY TO RESPOND**

1 KNOWINGLY AND INTELLIGENTLY TO QUESTIONS ABOUT THE PROPOSED
2 VISITATION; AND

3 (5) THE NAMES AND ADDRESSES OF:

4 (I) THE PROPOSED VISITEE'S SPOUSE, ADULT CHILDREN,
5 ADULT GRANDCHILDREN, PARENTS, AND SIBLINGS; AND

6 (II) IF A GUARDIAN OF THE PERSON HAS BEEN APPOINTED FOR
7 THE PROPOSED VISITEE, THE GUARDIAN OF THE PERSON.

8 (D) THE PETITIONER SHALL:

9 (1) PERSONALLY SERVE A COPY OF THE PETITION ON THE PROPOSED
10 VISITEE AND THE PROPOSED VISITEE'S ATTORNEY AND GUARDIAN OF THE PERSON,
11 IF ANY; AND

12 (2) MAIL A COPY OF THE PETITION TO THE PROPOSED VISITEE'S
13 SPOUSE AND RELATIVES LISTED IN THE PETITION, AT THE ADDRESSES STATED IN
14 THE PETITION.

15 15-103.

16 (A) (1) ON THE FILING OF A PETITION UNDER THIS TITLE, THE COURT
17 SHALL DETERMINE WHETHER THE PROPOSED VISITEE HAS RETAINED OR PLANS TO
18 RETAIN AN ATTORNEY TO REPRESENT THE PROPOSED VISITEE.

19 (2) THE COURT MAY APPOINT AN ATTORNEY FOR AN
20 UNREPRESENTED PROPOSED VISITEE.

21 (B) THE COURT SHALL APPOINT AN INDEPENDENT INVESTIGATOR TO
22 CONDUCT AN INVESTIGATION AND REPORT WRITTEN FINDINGS TO THE COURT.

23 (C) THE INVESTIGATOR SHALL:

24 (1) INTERVIEW:

25 (I) THE PROPOSED VISITEE;

26 (II) THE PROPOSED VISITEE'S GUARDIAN OF THE PERSON, IF
27 ANY;

28 (III) EACH PETITIONER;

1 (IV) THE PROPOSED VISITEE'S SPOUSE;

2 (V) THE PROPOSED VISITEE'S ADULT CHILDREN AND PARENTS;
3 AND

4 (VI) TO THE EXTENT PRACTICABLE, THE PROPOSED VISITEE'S
5 NEIGHBORS AND, IF KNOWN, CLOSE FRIENDS;

6 (2) INFORM THE PROPOSED VISITEE OF THE CONTENTS OF THE
7 PETITION;

8 (3) DETERMINE WHETHER THE PROPOSED VISITEE HAS THE
9 CAPACITY TO CONSENT TO THE REQUESTED VISITATION; AND

10 (4) DETERMINE WHETHER THE PROPOSED VISITEE DESIRES THE
11 PROPOSED VISITATION.

12 (D) AT LEAST 5 DAYS BEFORE THE HEARING ON THE PETITION, THE
13 INVESTIGATOR SHALL:

14 (1) FILE A WRITTEN REPORT OF THE INVESTIGATOR'S FINDINGS WITH
15 THE COURT; AND

16 (2) MAIL A COPY OF THE REPORT TO:

17 (I) THE PETITIONER AND THE PETITIONER'S ATTORNEY, IF
18 ANY;

19 (II) THE PROPOSED VISITEE, AND THE PROPOSED VISITEE'S
20 ATTORNEY AND GUARDIAN OF THE PERSON, IF ANY;

21 (III) THE SPOUSE, ADULT CHILDREN, AND PARENTS OF THE
22 PROPOSED VISITEE, UNLESS THE COURT DETERMINES THAT THE MAILING WILL
23 RESULT IN HARM TO THE PROPOSED VISITEE; AND

24 (IV) ANY OTHER INDIVIDUALS THAT THE COURT ORDERS.

25 (E) THE REPORT REQUIRED UNDER THIS SECTION IS CONFIDENTIAL AND
26 SHALL BE MADE AVAILABLE ONLY TO THE PARTIES, THE INDIVIDUALS DESCRIBED
27 IN SUBSECTION (D)(2) OF THIS SECTION, INDIVIDUALS GIVEN NOTICE OF THE
28 PETITION WHO HAVE REQUESTED THE REPORT OR WHO HAVE APPEARED IN THE
29 PROCEEDING, THEIR ATTORNEYS, AND THE COURT.

1 (F) IF AN INDEPENDENT INVESTIGATOR HAS PERFORMED AN
2 INVESTIGATION WITHIN THE PRECEDING 12 MONTHS AND FURNISHED A REPORT OF
3 THE INVESTIGATION TO THE COURT, THE COURT MAY ORDER, ON GOOD CAUSE
4 SHOWN, THAT ANOTHER INVESTIGATION IS NOT NECESSARY OR THAT A MORE
5 LIMITED INVESTIGATION MAY BE PERFORMED.

6 15-104.

7 (A) THE COURT SHALL MAIL NOTICE OF THE HEARING ON A PETITION
8 UNDER THIS TITLE TO EACH INDIVIDUAL LISTED IN § 15-103(D)(2) OF THIS TITLE.

9 (B) IN RULING ON THE PETITION, THE COURT SHALL DETERMINE WHETHER
10 THE PROPOSED VISITEE HAS SUFFICIENT CAPACITY TO MAKE A KNOWING AND
11 INTELLIGENT VISITATION DECISION.

12 (C) THE COURT SHALL GRANT REASONABLE VISITATION IF:

13 (1) THE COURT DETERMINES THAT THE PROPOSED VISITEE HAS
14 SUFFICIENT CAPACITY TO MAKE A KNOWING AND INTELLIGENT VISITATION
15 DECISION; AND

16 (2) THE PROPOSED VISITEE EXPRESSES A DESIRE FOR VISITATION.

17 (D) (1) IF THE COURT DETERMINES THAT THE PROPOSED VISITEE LACKS
18 THE CAPACITY TO MAKE A KNOWING AND INTELLIGENT VISITATION DECISION, THE
19 COURT SHALL DETERMINE WHETHER THE PROPOSED VISITEE WOULD WANT
20 VISITATION WITH THE PETITIONER.

21 (2) IN DETERMINING WHETHER THE PROPOSED VISITEE WOULD
22 WANT VISITATION, THE COURT SHALL CONSIDER:

23 (I) THE HISTORY OF THE RELATIONSHIP BETWEEN THE
24 PROPOSED VISITEE AND THE PETITIONER;

25 (II) ANY STATEMENTS MADE BY THE PROPOSED VISITEE
26 EXPRESSING A DESIRE TO HAVE VISITATION WITH THE PETITIONER;

27 (III) ANY POWER OF ATTORNEY OR OTHER DOCUMENT THAT
28 EXPRESSES AN OPINION ON VISITATION WITH THE PETITIONER; AND

29 (IV) THE REPORT OF THE INDEPENDENT INVESTIGATOR UNDER
30 § 15-103 OF THIS TITLE.

1 **(3) IF THE COURT DETERMINES THAT THE PROPOSED VISITEE WOULD**
2 **WANT VISITATION AND THAT THE VISITATION IS IN THE BEST INTERESTS OF THE**
3 **PROPOSED VISITEE, THE COURT SHALL GRANT REASONABLE VISITATION.**

4 **(E) THE COURT MAY NOT GRANT VISITATION IF:**

5 **(1) THE COURT DETERMINES THAT THE PROPOSED VISITEE HAS**
6 **SUFFICIENT CAPACITY TO MAKE A KNOWING AND INTELLIGENT VISITATION**
7 **DECISION; AND**

8 **(2) THE PROPOSED VISITEE EXPRESSES THAT THE PROPOSED**
9 **VISITEE DOES NOT DESIRE VISITATION.**

10 **(F) A DETERMINATION BY THE COURT REGARDING CAPACITY UNDER THIS**
11 **TITLE IS NOT ADMISSIBLE AS EVIDENCE IN ANY OTHER LEGAL PROCEEDING.**

12 **(G) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,**
13 **THE COURT SHALL ORDER EACH PETITIONER TO PAY THE REASONABLE FEES AND**
14 **EXPENSES OF THE INDEPENDENT INVESTIGATOR AND ANY ATTORNEY APPOINTED**
15 **UNDER § 15-103 OF THIS TITLE.**

16 **(2) ON REQUEST OF A PETITIONER, THE COURT MAY ORDER**
17 **ANOTHER INDIVIDUAL TO PAY THE REASONABLE COSTS AND EXPENSES OF THE**
18 **INDEPENDENT INVESTIGATOR AND ANY ATTORNEY APPOINTED UNDER § 15-103 OF**
19 **THIS TITLE IF:**

20 **(I) THE COURT FINDS THAT:**

21 **1. THE INDIVIDUAL HAD CUSTODY OR CONTROL OF A**
22 **PROPOSED VISITEE AND DENIED AN ADULT CHILD ACCESS TO THE PROPOSED**
23 **VISITEE FOR THE PURPOSE OF VISITATION; AND**

24 **2. THE DENIAL WAS IN BAD FAITH OR WITHOUT**
25 **SUBSTANTIAL JUSTIFICATION; AND**

26 **(II) THE INDIVIDUAL IS GIVEN NOTICE OF AND A REASONABLE**
27 **OPPORTUNITY TO RESPOND TO THE REQUEST.**

28 **(H) THE COURT HAS CONTINUING JURISDICTION TO VACATE OR MODIFY AN**
29 **ORDER ISSUED UNDER THIS SECTION.**

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 October 1, 2016.

